

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JENNIFER HANSEN)

For Appellant: Jennifer Hansen,
in pro. per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 18593' of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jennifer Hansen against a proposed assessment of additional personal income tax in the amount of \$451.31 for the year 1978.

Appeal of Jennifer Hansen

The sole issue for determination is whether appellant qualified as a head of household for 1978.

Appellant filed her 1978 personal income tax return as a head of household. In that return she named one of her three dependent children as the individual qualifying her for that filing status. Appellant and her husband lived together during January and February of 1978. Thereafter, they lived separate and apart. For the last ten months of 1978 appellant was the sole support of herself and her three children. Appellant received an interlocutory decree of dissolution in November 1978. However, she did not receive a final decree of dissolution until August 1979. At no time did appellant obtain a decree of legal separation. Respondent's determination that appellant was not entitled to head of household filing status gave rise to this appeal.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, a taxpayer must be unmarried and maintain as her home a household that is the principal place of abode of an individual who is within specified classes of relationship, including children. In general, although a taxpayer is separated from her spouse, she is still considered as being married for purposes of claiming head of household status, unless, at the close of the taxable year, she was legally separated from her spouse under a final decree of dissolution or a decree of separate maintenance. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973; Cal. Admin. Code, tit. 18, regs. 17042-17043, subd. (a)(D).)

For years beginning on or after January 1, 1974, Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household, where she lives separate and apart from her spouse during the entire year and maintains a home for dependent children under certain conditions. Although appellant, who was still legally married on the last day of 1978, did maintain a home for her two dependent children, she cannot qualify for head of household filing status because her spouse lived with her during part of 1978.

Appeal of Jennifer Hansen

Appellant has submitted certain documents which she apparently contends establish that she was legally separated from her husband under a final decree of legal separation. Although the documents recite that the parties were physically separated on July 16, 1978, there is no indication that either of the parties ever received a decree of legal separation.

For these reasons, respondent's action in this matter must be sustained.

Appeal of Jennifer Hansen

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Jennifer Hansen against a proposed assessment of additional personal income tax in the amount of \$451.31 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of December, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins and Mr. Cory present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

Kenneth Cory, Member